



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.2.2006

CORAM

WEB COPY

THE HON'BLE MR.JUSTICE P.D.DINAKARAN

AND

THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.(A) No.83 of 2006

The Commissioner of Income Tax
Tamil Nadu VII, Chennai.

.. Appellant

Vs.

M/s. Print Systems & Products
No.46, TTK Road
Chennai 600 018.

.. Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench dated 27.3.2002 in ITA No.3188/Mds/1992 for the assessment year 1988-89 against I.T.Appeal No.90/91-92/SR VII Order dated 27.1.1993 for the assessment year 1988-89 on the file of the Office of the Commissioner of Income Tax (Appeals) VII, Madras and C.No.1242-II (20)/91-92 Order dated 29.9.1992 on the file of the Commissioner of Income Tax, Tamil Nadu II, Madras and PAN/GIR No.47-064-FN-1289 Order dated 27.3.1991 on the file of the Deputy Commissioner of Income Tax, Secial Range VII, Madras.

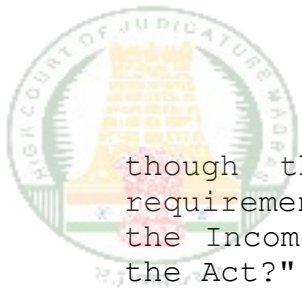
For Appellant : Mr.J. Naresh Kumar, Sr.S.C.

J U D G M E N T

(Delivered by P.D.DINAKARAN, J.)

The above tax case appeal is directed against the order of the Income-tax Appellate Tribunal in ITA No.3188/Mds/1992 dated 27.3.2002, raising the following substantial question of law.

"Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was right in law in setting aside the order of the Commissioner of Income-tax passed under section 263 of the Income-tax Act, even



though the assessee has not fulfilled the mandatory requirement as per the provisions of section 32AB(5) of the Income Tax Act to get deduction under section 32AB of the Act?"

WEB COPY

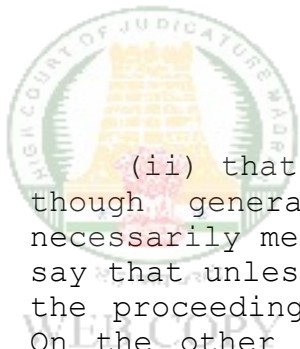
2. The brief facts of the case are stated as follows:

The relevant assessment year is 1988-89. The assessee is a registered firm. While computing income for the assessment year 1988-89, the assessing officer wrongly allowed the deduction for a sum of Rs.3.00 lacs under section 32AB. But, the Commissioner of Income Tax rectified the mistake under Section 263 of the Income Tax Act and directed the assessing officer to complete the same after withdrawing the investment allowances granted to the tune of Rs.3.00 lacs. Hence, the assessee preferred an appeal before the Tribunal, which set aside the order of the Commissioner, leading to filing of the present appeal.

3. The core contention of the revenue before the Commissioner is that the assessee is not entitled to deduction, as the assessee failed to file the audit report along with the return, which is a mandatory requirement for claiming deduction under Section 32AB(5). It is true, in the instant case, the assessee did not file the audit report along with the return. Hence, the question that arises for consideration is whether the requirement contemplated under Section 32AB(5) for allowing deduction under Section 32AB, viz. that the assessee has to file the return along with the report of audit, is mandatory or directory.

4.1. The settled rules of interpretation are

(i) even though it is a trite law that in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used vide *CAPE BRANDY SYNDICATE v. INLAND REVENUE COMMISSIONERS* ((1921) 1 King's Bench 64,71 (K.B.)) referred to with approval in *COMMISSIONER OF INCOME-TAX v. AJAX PRODUCTS LTD.* ((1965) 55 ITR 741, 747 (S.C.)), it is not every provision of a taxing statute that will fall under the rule of strict interpretation. The question whether a certain provision of law is directory does not fall to be decided on different standards because it is found in a taxing statute. There is no rule that every provision in a taxing statute is mandatory. The strict construction that a citizen does not become liable to tax unless he comes within the specific words of a statute is a different proposition. That a person cannot be taxed on the principle of estoppel does not admit of much argument, vide *DIRECTOR OF INSPECTION OF INCOME-TAX v. POORAN MALL AND SONS* (96 ITR 390);



(ii) that the use of the word "shall" in a statutory provision, though generally taken in a mandatory sense, but does not necessarily mean in every case it shall have that effect, that is to say that unless the words of the statute are punctiliously followed, the proceeding or the outcome of the proceeding would be invalid. On the other hand, it is not always to say that while the words "may" has been used, the statute is only permissive or directory in the sense that non-compliance with those provisions will not render the proceedings invalid vide CIT v. PUNJAB FINANCIAL CORPORATION (254 ITR 6);

(iii) that every provision of the statute should be construed to make it constitutionally valid and should not be construed as to make it unconstitutional, vide K.P.VARGHESE v. ITO (131 ITR 597);

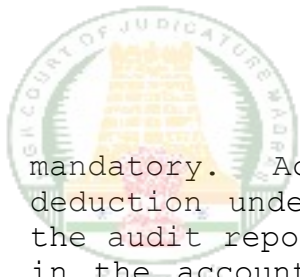
(iv) that the objective of the section should be carried out by granting the relief rather than pick out a venial fault for denying the relief, intended to be given by the statute vide CIT v. GUJARAT OIL AND ALLIED INDUSTRIES (201 ITR 325); and

(v) that the provisions of the statute should not be construed to frustrate that objective vide ADDL. CIT v. MURLIDHAR MATHURA PRASAD (118 ITR 392) and CIT v. SITARAM BHAGWANDAS (102 ITR 560).

4.2. With regard to interpretation of Section 32AB as well as corresponding Section 80J(6A) of the Act, it is a trite law that

(i) since there is no stipulation as to the time when the audit report should be filed, except that it should be filed along with the return, all that the assessee is required to do is to delay the filing of the return until the audit report is made available. The ground relied that the preparation of the audit report was beyond the control of the assessee and hence, the assessee could justifiably delay in filing the return itself so that it is accompanied by the audit report, should also be taken care of while construing the statute constitutionally valid. In such event, the income tax officer could not deny the deduction merely because the report is not filed along with the return, otherwise, the very purpose of Section 32AB(5) would be defeated. If that be so, Section 32AB(5) cannot be construed to give such an incongruous result. Therefore, to make Section 32AB(5) of the Act constitutionally valid, the only alternative or workable solution is that the audit report should be made available before the assessment is made, vide K.P.VARGHESE v. ITO (131 ITR 597) and followed in COMMISSIONER OF INCOME TAX v. A.N.ARUNACHALAM (208 ITR 481);

(ii) a full bench of Punjab and Haryana High Court in CIT v. PUNJAB FINANCIAL CORPORATION (254 ITR 6), interpreting Section 32AB (5) itself, which is the subject matter in the present appeal, held that the submission of the audit report is directory, but not



mandatory. According to the full bench, the assessee's claim for deduction under Section 32AB does not depend on the submission of the audit report along with the return, but on deposit of the amount in the account maintained by him with the Development Bank before the expiry of six months from the end of the previous year or before furnishing the return of the income, whichever is earlier. Therefore, the requirement of filing the duly audited report along with the return cannot be treated as mandatory and the assessee cannot be deprived of the benefit of deduction if the same is filed before the finalisation of the assessment. It is, therefore, specifically held that sub-section 5 of Section 32AB is not mandatory and the assessing officer has discretion to entertain the audit report, even though it has not been filed with the return and give benefit of the deduction to the assessee in terms of section 32AB(1). The full bench, while so holding that filing of audit report is not only mandatory, has observed that the question as to whether a statute is mandatory or directory depends upon the intent of the Legislature and not upon the language in which the intent is clothed. The meaning and intention of the Legislature must govern not only from the phraseology of the provision, but also by considering its nature, its design and the consequences, which should follow from construing it one way or the other;

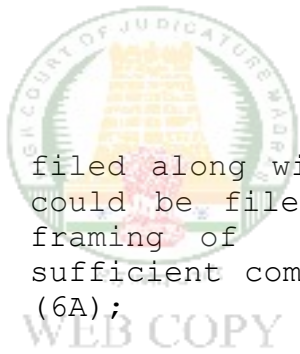
(iii) the full bench of Punjab and Haryana Court in PUNJAB FINANCIAL CORPORATION case referred to supra, has thus arrived at the conclusion that filing of audit report is directory, but not mandatory, based on the rule of interpretation, with reference to the fiscal statute in the matter of imposing penalty, formulated by the Apex Court, in STATE OF U.P. v. MANBODHAN LAL SRIVASTAVA (AIR 1957 SC 912), wherein it has been held as under:

"All the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that construction put on a particular provision makes consistent enactment of the whole statute. This would be more so if a literal construction of a particular clause leads to manifestly absurd results which could not have been intended by the Legislature.

The principle that a fiscal statute should be construed strictly is applicable only to taxing provisions such as a charging provision or a provision imposing penalty, and not to those parts of the statute which contain machinery provisions."

(emphasis supplied)

(iv) concededly, this Court, interpreting the corresponding provision 80J(6A) in COMMISSIONER OF INCOME TAX v. A.N.ARUNACHALAM (208 ITR 481) held that requirement that audit report should be



filed along with the return is not mandatory and the audit report could be filed even after submission of the return, but, before framing of assessment and the same could be construed as a sufficient compliance with condition contemplated under Section 80J (6A);

(v) again, in a recent decision of this Court in CIT v. JAYANT PATEL (248 ITR 199), while interpreting the corresponding section, viz. 80J, which also requires the audit report to be filed along with the return, held that requirement that the audit report should be furnished along with the return is only directory and not mandatory.

5. In view of the well settled principles uniformly held in the decisions cited supra, we have no hesitation to hold that the filing of the audit report along with the return, as contemplated under Section 32AB(5) of the Act, is only directory and not mandatory. Hence, finding no substantial question of law arising for consideration, the appeal is dismissed.

kpl

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. THE ASST. REGISTRAR,
INCOME TAX APPELLATE TRIBUNAL
III FLOOR, RAJAJI BHAVAN
BESANT NAGAR, CHENNAI-90.

2. THE COMMISSIONER OF INCOME TAX
APPEALS VII, MADRAS-34.

3. THE COMMISSIONER OF INCOME TAX
TAMIL NADU-II, MADRAS-34.

4. THE DEPUTY COMMISSIONER OF
INCOME TAX, SPECIAL RANGE, VII,
MADRAS-34.

1 cc to M/s.Pushya Sitaraman, Senior Standing Counsel,SR.8104
je (co)

dv/2.5.06

T.C.No.83 of 2006.